

1 **THE RUSSELL'S LAW FIRM, PLC**

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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF COCHISE**

12 **DAVID WELCH, individually and on behalf**

13 **of ALL CITIZENS OF COCHISE**

14 **COUNTY, PRECINCT FIVE,**

15 **Petitioner,**

16 **v.**

17 **COCHISE COUNTY BOARD OF**

18 **SUPERVISORS, PATRICK G. CALL,**

19 **ANN ENGLISH, AND PEGGY JUDD,**

20 **Respondents.**

Case No.:

21 **SPECIAL ACTION AND PETITION**

22 **FOR WRIT OF MANDAMUS,**

23 **PETITION FOR INJUNCTIVE AND**

24 **DECLARATORY RELIEF**

Assigned Hon.:

25 The Petitioner, David Welch, by and through his attorneys undersigned, states that he is a  
26 resident within Justice Court Precinct Five, Cochise County, Arizona, and is a named  
27 Defendant pending a trial in said court, and has a right to petition for writ of mandamus,  
28 petition for injunctive and declaratory relief in this Court, individually and on behalf of all  
citizens of Cochise County, Justice Court Precinct Five.

The Respondents, Patrick G. Call, Ann English, and Peggy Judd, have been elected to,  
and now hold office as the Cochise County Board of Supervisors.

It was, and still is, the Respondents' duty to appoint a qualified and competent Justice of  
the Peace for Precinct Five after following the proper application procedures, and complying  
with A.R.S. § 38-503 (anti-self-dealing statute) by properly notifying the public of its  
intention to self-deal and all conflicts of interest associated therewith.

1 The Petitioner, pursuant to the Rules of Procedure for Special Action against an officer  
2 and public body, states, alleges and complains as follows:

3 **PARTIES AND JURISDICTION**

4 1. The Petitioner, David Welch, is a Sierra Vista, Arizona resident living within the  
5 Justice Court Five precinct and pending trial in that court. That Petitioner has standing,  
6 individually, and on behalf of all Cochise County Justice Court Five residents to bring this  
7 action.

8 2. The Respondent, Cochise County Board of Supervisors (hereinafter "BOS"), is a local  
9 public body as described pursuant to A.R.S. § 11-202 with its address at 1415 Melody Lane,  
10 Suite G, Bisbee, Arizona 85603; the BOS governs Cochise County, Arizona.

11 3. The Respondent, Patrick G. Call, is a resident of Cochise County, Arizona and was  
12 elected, commissioned, qualified and acting as a member of the BOS; that said Respondent is  
13 subject to the requirements of A.R.S. §§ 38-503, 38-431.01, *et seq.* That Respondent, Patrick  
14 G. Call, purports to be acting as the Justice of the Peace, Precinct Five, Cochise County,  
15 Arizona.

16 4. The Respondent, Ann English, is a resident of Cochise County, Arizona and was  
17 elected, commissioned, qualified and acting as a member of the BOS; that said Respondent is  
18 subject to the requirements of A.R.S. §§ 38-503, 38-431.01, *et seq.*

19 5. The Respondent, Peggy Judd, is a resident of Cochise County, Arizona and was  
20 elected, commissioned, qualified and acting as a member of the BOS; that said Respondent is  
21 subject to the requirements of A.R.S. §§ 38-503, 38-431.01, *et seq.*

22 6. That at all times herein, Respondents were all agents of the BOS acting within the  
23 course and scope of their duties as elected public officials of a public body and were required  
24 to comply with all statutory duties of the office.

25 7. That the Respondents have caused acts, events, errors, omissions and occurrences of  
26 which the Petitioner presently complains in Cochise County, Arizona; that venue is proper in  
27 Cochise County Superior Court pursuant to A.R.S. § 12-401.  
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1 8. That jurisdiction is vested within the Cochise County Superior Court pursuant to  
2 A.R.S. §§§ 12-123, 12-2012, 12-1831 *et seq.*

3 **GENERAL ALLEGATIONS**

4 9. On or about February 10, 2019 the BOS had notice that Justice of the Peace Tim  
5 Dickerson was resigning from his position as Justice of the Peace for Precinct Five to take  
6 another judicial appointment within the county.

7 10. In anticipation of filling the vacancy of Justice of the Peace for Precinct Five, on or  
8 about February 10, 2019, the BOS published notice of two (2) separate meetings to be held on  
9 February 12, 2019 as follows:

10 a. Special Board Meeting and Possible Executive Session, February 12, 2019 at  
11 9:30 a.m. with 2 issues on the agenda: "1) Discussion regarding the process for  
12 filling the vacancy for Justice of the Peace in Justice Precinct 5" and "2)  
13 Appoint \_\_\_\_\_ as Justice of the Peace for Justice Precinct 5."

14 i. Respondent, Patrick G. Call, was asked to leave the executive session;

15 ii. Respondent, Patrick G. Call, knew, at that time, he was being appointed  
16 as Justice of the Peace.

17 b. Regular Board Meeting at 10:00 a.m. with a specified agenda that did not  
18 include any items related to filling the judicial vacancy.

19 11. Neither notice for the meetings to be held on February 12, 2019 contained any notice  
20 to the public that the BOS was going to a) propose one of its own members, Patrick G. Call,  
21 to fill a vacancy of Justice of the Peace for Precinct Five or b) Mr. Call's interest in the  
22 outcome of the decision.

23 12. Neither notice for the meetings to be held on February 12, 2019 contained any notice  
24 to the public that the BOS would be making an actual legal, binding appointment of the  
25 position of Justice of the Peace, Precinct Five at either the Special or Regular meetings.

26 13. The BOS held an executive session which was closed to the public and apparently  
27 voted during this closed meeting to appoint, Patrick G. Call, one of its own members, as the  
28

1 Justice of the Peace for Precinct Five, in violation of the open meeting statute A.R.S. §§ 38-  
2 431.01(A)(1) and (D).

3 14. Voting in executive session is proscribed.

4 15. Holding a vote to appoint Patrick G. Call to provide Judicial services to the County  
5 while he was serving as a member of the BOS is a conflict of interest in violation of A.R.S. §  
6 38-503 and was required to be disclosed to the public and opened for public discussion before  
7 the BOS conducted a vote.

8 16. Additionally, because of the conflict of interest in self-dealing to a member of the  
9 BOS, the Board was required to open up the bidding for the job of Justice of the Peace to  
10 other qualified members of the public for competitive bidding on the job and the BOS failed  
11 to give any notice to the public whatsoever of the job opening, nor did it consider other job  
12 applicants.

13 17. That there are several qualified individuals within the Precinct willing to apply for the  
14 Justice of the Peace position until the next election can be held.

15 **COUNT I**  
16 **(Declaratory Action)**

17 18. The Petitioner hereby incorporates in its entirety all foregoing allegations and contents  
18 as if the same were fully set forth herein.

19 19. That the Petitioner, and the remainder of the residents within Justice Court Five  
20 Precinct, have a legal, protectible right to have their legal actions that come before the Justice  
21 of the Peace to be determined by a qualified and properly appointed or elected Justice of the  
22 Peace.

23 20. That a controversy exists between the parties, as stated herein, and the Petitioner, and  
24 the remainder of residents within Justice Court Five Precinct, have legal rights that have, or  
25 will be, affected by the BOS's improper and illegal actions.

26 21. That all meetings by the BOS are required to be public and all legal action taken by the  
27 BOS must be voted on in a public meeting. A.R.S. §§ 38-431(3); 38-431.01 *et seq.*  
28

1 22. That no vote or legal action can be taken during an executive session, which is closed  
2 to the public, to bind the public body. A.R.S. § 38-431.01 (A)(1) and (D).

3 23. That all actions taken in violation of the open meeting statutes are null and void.  
4 A.R.S. § 38-431.05.

5 24. That all appointments made in violation of the conflict of interest statutes are null and  
6 void, A.R.S. § 38-503.

7 25. That declaratory judgment relief is both necessary and proper in order to set forth and  
8 determine the rights, obligations, and liabilities that exist among the parties because the BOS  
9 did not comply with statutes requiring public notice of Respondent Patrick G. Call's conflict  
10 of interest prior to the vote; that the BOS did not disclose that it would even be voting for the  
11 appointment of a Justice of the Peace candidate at the special meeting; that the BOS's vote to  
12 appoint Respondent Patrick G. Call was done in executive session and is invalid; that the  
13 BOS failed to open the position up to competitive application (bidding) in the face of Mr.  
14 Call's conflict of interest.

15 26. That because the BOS vote was held in an executive session, and violated the conflict  
16 of interest laws, the appointment of Patrick G. Call to Justice of the Peace is null and void,  
17 and must be declared null and void.

18  
19 **COUNT II**  
**(Writ of Mandamus)**

20 27. The Petitioner hereby incorporates in its entirety all foregoing allegations and contents  
21 as if the same were fully set forth herein.

22 28. That the Respondents had a legal duty to provide notice to the public of its intention to  
23 vote on appointing one of its members, Respondent, Patrick G. Call, as the Justice of the  
24 Peace for Precinct Five.

25 29. That the Respondents had a legal duty to disclose to the public that Respondent,  
26 Patrick G. Call, had a conflict of interest in applying for the Justice of the Peace position prior  
27 to taking a vote to appoint him as Justice of the Peace.

1 30. That the Respondents had a legal duty to open the position up for public bidding by  
2 other qualified candidates.

3 31. That the Respondents had a legal duty to vote, after proper notice to the public, in a  
4 public meeting.

5 32. That the Respondents had a legal duty to follow the laws of this State.

6 33. That the Respondents have breached their duties and have abused their discretion as  
7 stated herein.

8 34. That the Petitioner has no plain or adequate remedy at law, other than to have the  
9 Court issue a Writ of Mandamus requiring Respondents to comply with the open meeting  
10 statutes and properly notify the public of its intent to appoint one of its own members to fill  
11 the vacancy of Justice of the Peace and to open the position to the public for application  
12 (bidding) by other qualified candidates.

13 35. That the Court should also issue a Writ of Mandamus ordering the BOS to  
14 immediately produce the minutes of the executive session for in camera review by the Court  
15 for consideration of release to the public as being relevant to this action pursuant to A.R.S. §  
16 38-431.07(c).

17 **COUNT III**  
18 **(Injunctive Relief)**

19 36. The Petitioner hereby incorporates in its entirety all foregoing allegations and contents  
20 as if the same were fully set forth herein.

21 37. That the Respondents' actions as specifically stated herein have been in violation of  
22 the law and in violation of the Petitioner's rights, and all those of Cochise County.

23 38. That the Respondents' actions adversely affect and/or threaten the Petitioner's right, as  
24 well as the rights of all those in Justice Court Five, to have his (their) legal action(s) decided  
25 by a competent and properly appointed or elected Justice of the Peace.

26 39. The Respondents' actions in appointing one of their own, Respondent Patrick G. Call,  
27 is invalid, as specifically stated herein.

1 40. That the Petitioner has no adequate remedy at law and will suffer irreparable harm if  
2 injunctive relief is not granted as his legal rights will be determined by an incompetent and  
3 improperly appointed Justice of the Peace.

4 41. That this Court should issue an injunction prohibiting the BOS from conducting any  
5 further executive sessions/meetings on this issue and order the BOS to hold all meetings in  
6 public in compliance with the open meetings statutes.

7 42. That this Court should issue an injunction requiring the BOS properly notify the public  
8 of its intent to appoint one of its own members to fill the vacancy of Justice of the Peace and  
9 to open the position to the public for application (bidding) by other qualified candidates.

#### 10 **COUNT IV**

##### 11 **(Attorney Fees, Costs and Penalties against Individual Board Members)**

12 43. The Petitioner hereby incorporates in its entirety all foregoing allegations and contents  
13 as if the same were fully set forth herein.

14 44. That the Petitioner is entitled to an award of attorney fees pursuant to A.R.S. §§ 38-  
15 431.07 and 12-2030.

16 45. That the Petitioner is entitled to an award of costs pursuant to A.R.S. §§ 12-341 and  
17 12-1840.

18 46. That civil monetary penalty should be assessed against each Board Member  
19 individually, which may be withheld from their pay.

20 **WHEREFORE**, the Petitioners having stated their requests for relief against the  
21 Respondents herein pray as follows:

- 22 1. That this Court issue an Order declaring Respondent Patrick G. Call's  
23 appointment as Justice of the Peace Precinct Five null and void;
- 24 2. That this Court issue a Writ of Mandamus ordering the Respondents to comply  
25 with the open meeting statutes and properly notify the public of its intent to  
26 appoint one of its own members to fill the vacancy of Justice of the Peace and  
27 to open the position to the public for application (bidding) by other qualified  
28 candidates;

- 1 3. That this Court issue a Writ of Mandamus ordering the Respondents to convene  
2 the proper Justice of the Peace selection committee, and properly consider other  
3 qualified applicants for Justice of the Peace;
- 4 4. That this Court issue a Writ of Mandamus ordering the BOS to immediately  
5 produce the minutes of the executive session for in camera review by the Court  
6 for consideration of release to the public as being relevant to this action  
7 pursuant to A.R.S. § 38-431.07(c).
- 8 5. That this Court issue an injunction enjoining the Respondents from holding any  
9 further closed meetings to vote on filling the vacancy of Justice of the Peace,  
10 Precinct Five, in light of the conflict of interest;
- 11 6. That this Court issue an injunction prohibiting the BOS from conducting any  
12 further executive sessions/meetings on this issue and order the BOS to hold all  
13 meetings in public in compliance with the open meetings statutes;
- 14 7. That this Court issue an injunction requiring the BOS to properly notify the  
15 public of its intent to appoint one of its own members to fill the vacancy of  
16 Justice of the Peace and to open the position to the public for application  
17 (bidding) by other qualified candidates;
- 18 8. That the Court order monetary penalties be assessed against the Respondents  
19 individually;
- 20 9. That Petitioner be awarded any and all attorney fees and costs incurred in filing  
21 this action; and,
- 22 6. For such other and further relief as the Court may deem just and proper in the  
23 premises.

24 DATED this 14<sup>th</sup> day February, 2019.



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**THE RUSSELL'S LAW FIRM, PLC**

By: /s/ D. Christopher Russell  
D. Christopher Russell  
Attorney for Petitioners

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VERIFICATION

STATE OF ARIZONA           )  
  )ss.  
COUNTY OF COCHISE       )

David Welch, being first duly sworn, upon his oath deposes and states as follows: That he is a Petitioner in the above-captioned action; that he has read the foregoing Special Action and Petition for Writ of Mandamus, Petition For Injunctive and Declaratory Relief, knows the contents thereof, and that the matters and things alleged therein are true in substance and in fact, except for those matters alleged upon information and belief, and as to those allegations, he believes them to be true.

David Welch  
DAVID WELCH  
Petitioner, Individually and on behalf  
of all citizens of Cochise County

SUBSCRIBED AND SWORN to before me this 14 day of February, 2019.



Tracy A. Laird  
NOTARY PUBLIC